FILED
NOV 7 1979

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-583

STATE OF MINNESOTA,

Petitioner,

v.

WILLIAM HELENBOLT,

Respondent.

BRIEF IN OPPOSITION

LUCAS & CARLSON
Attorneys at Law
/s/ ROBERT E. LUCAS
404 Central Avenue North
Duluth, Minnesota 55807
Telephone: (218) 624-3671
Counsel for Mark Allen Bailey

1979—Northwest Brief Printing Co., 316 Chicago Avenue, Minneapolis 55415—338-5078

IN THE

Supreme Court of the United States

October Term, 1979

No. ————

STATE OF MINNESOTA,

Petitioner,

v.

WILLIAM HELENBOLT,

Respondent.

BRIEF IN OPPOSITION

INTRODUCTION

The undersigned is a part-time Public Defender in and for the Sixth Judicial District of Minnesota. As such, he was appointed to represent Mark Allen Bailey in January, 1979. That at issue are the 5th Amendment rights of Mark Allen Bailey. That since the right against self-incrimination is a personal right that belongs to Bailey, Bailey is the proper party in interest and should be the named Respondent.

I.

THE WRIT SHOULD NOT ISSUE FOR THE FOLLOWING REASONS:

The Minnesota Supreme Court has not decided a Federal question, but a point of its own criminal appellate procedure.

The State appealed to the Minnesota Supreme Court from a pre-trial Order of District Court Judge Donald C. Odden. This appeal was taken pursuant to Minnesota Rules of Criminal Procedure, Rule 29.03. These Rules were adopted by the Minnesota Supreme Court on July 1, 1975, and superseded certain procedural statutes. The Minnesota Supreme Court requires that the State, in order to perfect its appeal, must demonstrate: (a) That the Trial Court has erred and; (b) That the error will have a critical impact on the trial.

In *State of Minnesota v. Webber,* 262 NW2d 157 (1977), the Court stated as follows:

> "Accordingly, we hold that when an appeal is taken by the State pursuant to Rule 29.03 subd. 1, this Court will only reverse the determination of the Trial Court if the State demonstrates clearly and unequivocally that the Trial Court has erred in its Judgment and that, unless reversed, the error will have a critical impact upon the outcome of the trial."

An easy reading of the decision of the Minnesota Supreme Court in this matter revealed that the State has failed to meet its burden as required by *Webber.*

The Rule in *Webber* is not a new one, but is a judicial modification of the superseded statutes. Minnesota Statutes Annotated 632.11 and 632.12.

II.

The issue is not yet ripe for review by this Court since the Minnesota Supreme Court has not yet passed, nor has it had an opportunity to pass, upon the issue of the voluntariness of Bailey's statement. Judge Odden did indeed find

that Bailey's statement was admissible against Bailey. Bailey's statement was, in fact, used against Bailey in both of his trials. Bailey has no right under Minnesota law to appeal Judge Odden's Order permitting the use of his statement until after he is convicted. Minnesota Rules of Criminal Procedure, Rule 29.02.

Bailey has been advised by his trial counsel to appeal his conviction on several grounds including the lack of voluntariness in the statement give to Sergeant Hall. Bailey has 90 days in which to appeal his conviction to the Minnesota Supreme Court. Rule 29.02 subd. 5 (3). That appeal will be handled in the Minnesota Supreme Court by the State Public Defender pursuant to Minnesota Statutes 611.25.

At no time during any of the proceedings did Bailey take the witness stand, except during a pre-trial hearing in which he denied the statement was voluntary. He alleged that Sergeant Hall made promises in return for the statement, or at least led him to believe that he would be lightly treated in return for the statements.

III.

The Petitioner's claim has no merit. The Petitioner wants this Court to declare that once a person gives a police officer a statement after he has been advised of his simple rights of *Miranda v. Arizona,* 384 U.S. 436, 16 Led2nd 694, 86 Sup. Ct. 1602, 10 ALR3rd 974, then he waives his testimonial privileges of self-incrimination under the 5th Amendment to the U.S. Constitution. The Petitioner is simply confusing apples and oranges. He is attempting to elevate a simple rule of evidence to Constitutional prominence.

Respectfully submitted,

ROBERT E. LUCAS
Lucas & Carlson
404 Central Avenue North
Duluth, Minnesota 55807
Telephone: (218) 624-3671
Counsel for Mark Allen Bailey